

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**STEVE L. LYONS**

Claimant

VS.

**IBP, INC.**

Respondent

Self-Insured

)  
)  
)  
)  
)  
)  
)

Docket No. 251,250

**ORDER**

Respondent requested Appeals Board review of Administrative Law Judge Brad E. Avery's October 3, 2001, preliminary hearing Order for Compensation.

**ISSUES**

The Administrative Law Judge (ALJ) granted claimant's requests for temporary total disability benefits and medical treatment through orthopedic surgeon William O. Reed, Jr., M.D. for surgery to extend the fusion of claimant's cervical spine through C6-7.

Respondent appeals and contends that claimant's current need for surgery at the C6-7 level is not a result of a personal injury by accident that arose out of and in the course of his employment with respondent. Instead, respondent argues claimant's current need for surgery is related to a previous May 1990 work-related accident while claimant was employed by another employer that resulted in surgery performed at C5-6.

But claimant contends that his testimony coupled with Dr. Reed's June 28, 2001 Office Note, proves that it is more probably true than not that claimant's current need for surgery at C6-7 is related to his work while employed by respondent. Thus, claimant requests the Appeals Board (Board) to affirm the ALJ's preliminary hearing Order.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record and considering the arguments contained in the parties' briefs, the Board makes the following findings and conclusions:

In May 1990, while working for another employer, claimant injured his cervical spine. As a result of that work-related accident, claimant was diagnosed with a left central disc herniation at C5-6. On October 4, 1990, claimant underwent an anterior cervical discectomy at C5-6.

Claimant commenced working for respondent on November 16, 1998. Claimant had successfully recovered from his May 1990 injury and was able to perform heavy full-time work for the respondent until July 10, 1999. On July 10, 1999, claimant injured his low back and neck while working for the respondent lifting a motor and gear box. Respondent provided medical treatment for claimant's injuries through orthopedic surgeon Dr. Reed of Shawnee Mission, Kansas.

Dr. Reed first saw claimant on August 9, 1999, with complaints of low back and left leg pain. Dr. Reed placed claimant in a work hardening program for one-half of the work day and returned claimant to light work for the other half of the work day. Dr. Reed also had claimant undergo an MRI examination of the cervical and thoracic spine to rule out any other spinal cord abnormalities that could be the cause of the clonus found in claimant's lower extremities.

The thoracic MRI scan was unremarkable. But the cervical MRI scan was extremely remarkable showing the C5-6 osseous fusion and a large herniated disc and severe canal stenosis at C4-5. Dr. Reed opined that this area of compression of the spinal cord was generating claimant's abnormal reflexes and loss of sensory and motor functions. On October 3, 1999, Dr. Reed performed an anterior cervical discectomy and fusion at C4-5.

Dr. Reed continued to follow claimant and in the June 28, 2001 Office Note, which was admitted into the preliminary hearing record he found claimant's condition had worsened. Additionally, Dr. Reed found claimant had a new herniated disc at C6-7 and attributed claimant's worsening condition to the new herniation. Dr. Reed further concluded in the June 28, 2001 Office Note:

The herniated disc at C6-7 is directly related to the increased stresses due to the previous treatment for the herniated disc at C4-5 and C5-6. The fusion mass has led to increased levering, which has caused advanced and rapid deterioration at C6-7. His fusion will have to be extended to C6-7. This can be done with a cervical cage, which would allow the opportunity to treat 6-7 in isolation without having to remove all the previous hardware. We will obtain a fresh MRI scan to be absolutely certain no other condition exists contributing to his worsening symptoms. He is available for sedentary work only. He must be allowed frequent changes of position.

Claimant described his current symptoms as loss of sensation in left side of his body. Moreover, claimant testified that in the last six months his condition had worsened.

Without any supporting medical opinion, respondent appealed and argues that claimant's current need for surgery is not related to the C4-5 herniated disc aggravated by claimant's work. But instead, respondent argues claimant's need for surgery is related to his first C5-6 disc injury that occurred in 1990 and the natural aging process increased by the disc injury.

The Board finds claimant's testimony and Dr. Reed's June 18, 2001 Office Note are persuasive and prove that claimant's current need for surgery at C6-7 is, at least in part, directly related to the increased stresses due to the previous discectomy and fusion at C4-5. Accordingly, since claimant's C4-5 herniated disc was aggravated by claimant's work while employed by respondent, the Board concludes the C6-7 herniation is the natural and probable consequence of the primary C4-5 herniation and resulting surgery.<sup>1</sup> Thus, the Board concludes that the ALJ's preliminary hearing Order should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Board that ALJ Brad E. Avery's October 3, 2001, preliminary hearing Order, should be, and is hereby affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 2002.

---

BOARD MEMBER

c: Judy Pope Edwards, Attorney for Claimant  
Gregory D. Worth, Attorney for Respondent  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Workers Compensation Director

---

<sup>1</sup> See Makalous v, Kansas State Highway Commission, 222 Kan. 477, 486, 565 P.2d 254. (1977).